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June 2, 2010

Matthew D. Keenan

The Honorable Donovan W. Frank
United States District Court
724 Federal Building
316 N. Robert Street
St. Paul, Minnesota 55101

2555 Grand Blvd.
Kansas City
Missouri 64108-2613
816.474.6550
816.559.2271 DD
816.421.5547 Fax
mkeen@shb.com

Re: *In re: Guidant Corp. Implantable Defibrillators Products Liability
Litigation*, MDL No. 05-1708

Dear Judge Frank:

I am writing on behalf of Guidant in response to the Court's May 26, 2010 Order requiring the parties to submit letter briefs explaining why 5% of claimants' settlement awards have been held back, when the 5% should be released, and what events must occur before the 5% can be released. The Court also asked that the parties include in their letter briefs any other settlement-related issues that need to be addressed.

The Court's Order reflects that some claimants are upset about the holdback. To alleviate any confusion that claimants may have, Guidant has played no part in the decision to hold back 5% of their allocated awards. The 5% holdback is the result of a decision by the Plaintiffs' Steering Committee ("PSC"), very early on in the settlement process, to allocate settlement funds as though the final settlement amount would be the maximum possible amount of \$240,000,000, knowing that this might not be the case.

Guidant and the PSC agreed in the Master Settlement Agreement ("MSA") that the total settlement amount would be \$240,000,000 to settle the cases and claims of 8,500 claimants, and that if fewer than 8,400 claimants participated in the settlement, the amount Guidant owed would be reduced accordingly. Specifically, Section II.A.1 of the MSA provides that "[t]o the extent that fewer than 8400 Claimants participate in the Settlement as 'Participating Claimants' (as defined in Section III.F.3), the amount of the Settlement Fund will be reduced by an amount equal to the difference between 8400 and the number of Participating Claimants, divided by 8400, and multiplied by \$240,000,000. . . ."

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We now know that the final number of participating claimants is 8,180. Thus, the MSA provides that the total amount Guidant owes is \$233,714,285.71 rather than the full \$240,000,000 (97.4%). Due to a number of remaining administrative issues for the PSC to resolve – such as the allocation of funds to the final group of payment-eligible claimants and the satisfaction of third-party payor liens – Guidant cannot predict the final percentage of claimants' awards that will be held back or when the money will be released. Guidant looks to the PSC to speak to these issues.

In the administration of settlements of this size and complexity, it is exceedingly difficult to predict what complications may arise. Consequently, although the PSC perhaps could have better protected claimants' expectations by allocating funds more conservatively at the outset (*i.e.*, building in a 5% holdback when informing a claimant of his or her award) and then allocating more funds later according to the actual final settlement amount, Guidant does not fault the PSC for proceeding as it did. Guidant wishes to underscore that it has never demanded that any monies be held back from claimants' individual allocated awards and has always adhered to the terms of the MSA.

As of June 3, 2010, Guidant will have paid all of the money that it owes under the MSA. The breakdown of Guidant's payments – including an illustration of amounts that have gone toward plaintiffs' attorneys' fees and costs – is as follows:

Date	Payment Amount	Portion Designated for Claimant Awards	Portion Designated for Plaintiffs' Attorneys' Fees and Costs
8/11/07	\$20,000,000.00	\$0	\$20,000,000.00
12/22/08	\$187,362,938.70	\$166,457,838.70	\$20,905,100.00
1/27/09	\$13,201,392.01	\$13,201,392.01	\$0
3/11/09	\$4,961,212.50	\$4,961,212.50	\$0
5/1/09	\$3,657,709.80	\$3,657,709.80	\$0
7/7/09	\$2,444,512.50	\$2,444,512.50	\$0
10/22/09	\$732,975.00	\$732,975.00	\$0
6/3/10	\$1,353,545.20	To be determined	To be determined
TOTALS	\$233,714,285.71	To be determined	To be determined

Having paid all of the money that it owes under the settlement agreement it negotiated with the PSC, Guidant is aware of no further settlement issues that need to be addressed.

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Very truly yours,

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